

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARNELL HUNNICUTT,

Plaintiff,

No. 2:18-cv-00667-JB-KRS

v.

DESTINEE MOORE; RAYMOND
SMITH; GEO; LCCF; M VALERIANO;
STACEY BEAIRD; KATHERINE BROODIE;
P VALDEZ; and GERMAN FRANCO,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR PROTECTIVE ORDER
AND PLAINTIFF'S MOTION FOR DISCOVERY**

THIS MATTER comes before the Court on Defendants' motion for a protective order seeking to avoid discovery from Plaintiff (Doc. 12), and Plaintiff's motion for discovery asking permission to propound requests on Defendants.¹ (Doc. 13). Having considered the parties' submissions related to these motions along with record in this case, the Court denies both without prejudice.

Prisoner complaints are excluded from pre-trial case management procedures, including discovery obligations, under the Court's local rules. *See D.N.M.LR-Civ. 16.3(d)*. Thus, the parties are not obliged to engage in or respond to discovery. Additionally, the complaint in this case is subject to screening under 28 U.S.C. § 1915A. Under that statute, the Court may dismiss a prisoner civil rights complaint *sua sponte* "if the complaint . . . is frivolous, malicious, or fails to state a claim on which relief may be granted." 28 U.S.C. § 1915A(b). That screening function has not yet occurred, and there is a pending dispositive motion. If the complaint survives

¹ Plaintiff has also sought discovery under Federal Rule of Civil Procedure 56(d) in responding to Defendants' motion for summary judgment. (*See Doc. 20*) This order does not purport to adjudicate Plaintiff's "Rule 56[d] MOTION to Stay consideration of MOTION for Summary Judgment." (Doc. 20). That motion will be taken up as part of resolving the pending dispositive motion.

screening and/or dispositive motion practice, the Court will determine whether to hold a Rule 16 discovery conference otherwise order a *Martinez* report. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978) (requiring prison officials, if ordered, to (1) thoroughly explain the allegations in a prisoner's complaint; (2) provide the results, if any, of their investigation into the allegations; (3) submit affidavits supporting any facts in the report; and (4) provide copies of all grievances and other documents related to the administrative record).

IT IS, THEREFORE, ORDERED that Defendants' motion for a protective order (Docs. 12 & 13) are **DENIED** without prejudice.



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE